

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KROLL, LLC,		:	
	Plaintiff,	:	
		:	24-CV-01977 (JAV)
-against-		:	
		:	<u>ORDER</u>
ANNA POVINELLI,		:	
	Defendant.	:	
-----X		:	

JEANNETTE A. VARGAS, United States District Judge:

On April 8, 2024, this Court entered a Stipulation and Order prohibiting Defendant from retaining and using “Kroll’s trade secrets and proprietary or confidential information.” (ECF No. 12) (the “April Order”). On December 9, 2024, Plaintiff submitted a letter (ECF No. 35) requesting a pre-motion conference to address its anticipated motion for sanctions against Defendant Anna Povinelli for contravening the April Order. Although Defendant’s counsel sent an email to Plaintiff’s counsel on April 10, 2024, confirming that Ms. Povinelli had returned or deleted all Kroll data and documents, Plaintiff noted that an “overwhelming majority” of Defendant’s initial production of documents, made on November 25, 2024, in the matter *Povinelli v. Kroll*, 1:24-cv-2066, matched what was returned to Kroll on April 10. (ECF No. 35). In response, Defendant acknowledged in a letter (ECF No. 36) dated December 10, 2024, that Ms. Povinelli’s counsel did indeed retain copies of the Kroll documents that were formerly in Ms. Povinelli’s possession and that she had since deleted. Defendant’s counsel countered that Ms. Povinelli’s ability to raise a defense in further proceedings would be hindered should her counsel be prohibited from retaining the copies of the documents. In a supplemental letter (ECF No. 37) dated December 11, 2024, Plaintiff’s counsel repeated its request for a pre-motion conference, arguing that the Defendant’s retention of Kroll’s documents is wrongful in light of the April

Order.

After reviewing the letters submitted by both parties' counsel and the April Order itself, this Court consulted with Judge Mary Kay Vyskocil, who presided over the case at the time the April Order was issued.


The April Order clearly requires Defendant to destroy or return the Kroll documents in question. Specifically, the April Order provides that the "Defendant shall not retain any such documents currently in her possession, custody or control." ECF No. 12. The April Order's language thus also prohibits Defendant's counsel, as her agent, from retaining the documents in counsel's possession, custody, or control. *See Markus v. Rozhkov*, 615 B.R. 679, 705-06 (S.D.N.Y. 2020) ("Documents in the possession of a party's attorney may be considered to be within the control of the party.") (quoting *Chevron Corp. v. Donziger*, 296 F.R.D. 168, 190 (S.D.N.Y. 2013)).

In addition to its clear preclusion of the retention of the Kroll documents by Defendant's counsel for use in this litigation, the April Order explicitly contemplated that Defendant could seek documents relevant to the litigation through discovery when it specified that "Defendant may seek disclosure of and/or testify regarding such document and information as is necessary and exchanged in discovery to wage a defense and to pursue her own claims for litigation purposes only." ECF No. 12. Upon review of the docket and consultation of Judge Vyskocil, it appears that Defendant's counsel did not avail themselves of that process and, instead, unilaterally decided to retain the documents. It is hereby

**ORDERED** that Defendant's counsel immediately destroy all copies of the Kroll documents within their possession and confirm to this Court by a letter filed on the docket that they have done so within 72 hours of this Order. Any failure to comply with this Court's Order

could result in the imposition of sanctions. The Clerk of Court is directed to terminate ECF No. 35.

Dated: December 23, 2024  
New York, New York



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JEANNETTE A. VARGAS  
United States District Judge